

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARGARITA RAMIREZ and DANIEL §
RAMIREZ, Individually, On Behalf of §
the Estate of D. J. R., §
Deceased, as Next Friend of §
A. R., a Minor, and §
As Next Friend of I. R., A Minor, §
§
Plaintiffs, §
§
vs. §
§
JAMES E. OWEN TRUCKING, INC., and §
NATHAN BERNARD FRAZIER, §
Defendants. §

CIVIL ACTION NO. 1:15-cv-00649-RP

**EMERGENCY MOTION TO ENFORCE SETTLEMENT AGREEMENT AND
PAYMENT**

TO THE HONORABLE DISTRICT JUDGE PITMAN:

COMES NOW Plaintiffs Margarita Ramirez and Daniel Ramirez, Individually, on Behalf of the Estate of D.J.R., Deceased, and as Next Friend of A.R., a minor, (hereinafter "Plaintiffs") to respectfully asks the Court to enforce the parties' mediated settlement agreement and payment, and in support thereof represents as follows:

1. The parties agreed to a mediation settlement of the claims of Margarita Ramirez and Daniel Ramirez, both individually, and on behalf of the Estate of D.J.R., Deceased, and as Next Friend of A.R., a minor. The Settlement Agreement was executed by all parties to this lawsuit on July 18th, 2016. The Settlement Agreement expressly stated Plaintiffs shall receive from Defendants the sum of [REDACTED], *on or before August 22nd, 2016.*

2. The Settlement Agreement acknowledged the [REDACTED] sum would be paid by the Defendants to each Plaintiff in the amounts as follows:

- Margarita Balderas Ramirez
- Daniel Ramirez
- Estate of D.J.R.
- A.R.(minor)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. On August 23, 2016, the Parties filed an Agreed Motion for Approval of Minor Settlement and Agreed Stipulations. Pursuant to the Motion, the parties stipulated to "provide more time for the settlement for minor A.R" and to extend "the deadline....to make payment...to be two weeks after the Court has approved settlement of claims of minor A.R". Accordingly, the Agreed Motion provided that only the amounts owed to minor A.R., or [REDACTED] out of the total [REDACTED], would be due after August 22nd, 2016.

4. All executed settlement release and indemnity agreements have been signed and provided to Defendants.

5. Excluding the sum owed to minor A.R., the Defendants owed the total sum of [REDACTED] to Margarita Ramirez, Daniel Ramirez, and Estate of D.J.R collectively on or before August 22nd, 2016. As of the date of filing this Motion, the Defendants have only paid [REDACTED] to the Plaintiffs.

6. Counsel for the Plaintiffs has repeatedly requested Defendants pay the remaining balance of [REDACTED] immediately. The Defendants have failed and refused, continuing with new excuses.

CONCLUSION

7. Plaintiffs respectfully requests this Court GRANTS its Motion To Enforce the Settlement Agreement, order the Defendants to immediately comply with the settlement terms

thereof, pay Plaintiffs the [REDACTED] immediately and award Plaintiffs its costs and reasonable attorney fees in seeking to enforce the Settlement Agreement since Defendants are in breach since August 22, 2016.

Respectfully submitted,

KILLEEN & STERN, PC

By: /s/ Robert J. Killeen, Jr.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was filed electronically on September 6, 2016. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s/ Robert J. Killeen, Jr.